

TOWN COUNCIL MINUTES

December 21, 2009

The regularly scheduled meeting of the Hampden Town Council was held on Monday, December 21, 2009. The meeting was held at the municipal building council chambers and was called to order by Mayor Arnett at 7:00 p.m.

Attendance: Councilors: Mayor Matthew Arnett, Andre Cushing, Thomas Brann, William Shakespeare, Shannon Cox, Jean Lawlis and Janet Hughes

Town Manager: Susan Lessard

Town Counsel: Thomas Russell was absent

Department Heads/Staff: Town Planner Bob Osborne

A. CONSENT AGENDA

The Treasurer's Warrants were reviewed and signed by the Finance Committee at its meeting earlier in the evening. Motion by Councilor Cushing, seconded by Councilor Cox to accept the balance of the Consent Agenda – unanimous vote in favor.

B. PUBLIC COMMENTS

There were none.

C. POLICY AGENDA

1. PUBLIC HEARINGS

- a. APPLICATION FOR RENEWAL OF A VICTUALER'S LICENSE
RECEIVED FROM DLJJ, LLC d/b/a EDWARDS FAMILY SHOP 'N
SAVE AT 77 WESTERN AVENUE

Mayor Arnett explained the procedure for the public hearing and then opened the hearing.

Proponents – none; Opponents – none: General Questions or Comments – None. The hearing was closed.

Motion by Councilor Brann, seconded by Councilor Cushing to approve the application – unanimous vote in favor.

**b. PROPOSED AMENDMENTS TO OUTDOOR WOODFIRED BOILER
ANNUAL LICENSING ORDINANCE**

Town Planner Bob Osborne explained that these amendments include definitions for the various types of boilers and the minimum lot size and setback requirements for each type. The amendment prohibits initial licensing of non-EPA qualified outdoor woodfired boilers after the effective date of the amendment (current licensed non-qualified boilers will be grandfathered). Bob pointed out that there is no change in the months of operation as set forth in the current ordinance.

Planning & Development Committee Chair Cushing reported that considerable time and thought has been put into this amendment in order to respect people looking for alternative heating, while at the same time recognizing that there is an obligation to protect the health and safety of abutting residents. Mayor Arnett then opened the hearing.

Proponents – none; Opponents – none: General Questions or Comments – None. The hearing was closed.

Motion by Councilor Cushing, seconded by Councilor Brann to adopt the amended Outdoor Woodfired Boiler Ordinance.

Discussion: Councilor Shakespeare noted that the Town has no experience as to how much smoke these EPA approved boilers produce and he feels that any smoke can be bothersome for people with breathing problems. He said he can not vote for this to pass.

Councilor Hughes said she believes that smoke is measurable by particulate matter emissions and the three phases approved by the EPA are based on the tiered level of those particulate emissions. She pointed out that the Committee has added to that by looking at the lot sizes, the setbacks from residences and the months of operation. She feels that the Town has been more stringent in considering the health and welfare of its citizens and without passage of this amendment, we would fall back to the DEP standards, which are less stringent.

Vote on the motion: 6 in favor; 1 opposed (Shakespeare) – motion carried.

2. NOMINATIONS-APPOINTMENTS-ELECTIONS

a. Services Committee Recommendations:

1. Katherine Carter – Friends of Dorothea Dix Park
2. Anthony Sangiovanni – Friends of Dorothea Dix Park
3. Dory Sangiovanni – Friends of Dorothea Dix Park
4. Phillip Buckley – Friends of Dorothea Dix Park
5. Jon Simms – Friends of Dorothea Dix Park
6. Susan Simms – Friends of Dorothea Dix Park
7. Pamela Tremblay – Friends of Dorothea Dix Park
8. Judy Markowsky – Friends of Dorothea Dix Park



C-1-b

TO: Mayor Arnett and Hampden Town Council
FROM: Robert Osborne, Town Planner
SUBJECT: Draft Outdoor Woodfired Boiler Ordinance Amendments.
DATE: November 5, 2009

At the November 4, 2009 Council Planning and Development Committee meeting the vote was ~~unanimous~~ to return this item to the Council for public hearing.

As you know the committee reviewed this language and recommended that it be sent forward to the Council. Subsequently this language was reviewed by Town Attorney, Tom Russell who recommended the following changes which are incorporated into this draft of the ordinance.

Proposed Amendments to Outdoor Wood-Fired Boiler Annual Licensing Ordinance

As you know, the DEP adopted Chapter 150, entitled "Control of Emissions from Outdoor Wood Boilers", effective November 9, 2007. Chapter 150 has been amended twice since its adoption, the most recent amendments being effective April 7, 2009. Although Section 4(D) provides that Chapter 150 does not pre-empt any local ordinance, it is my understanding that the proposed amendments are intended to reconcile differences between Chapter 150 and the Town's Ordinance.

In my review of the proposed amendments to the Town's ordinance, I noticed that the amendments do not include amending the ordinance definition of "outdoor wood-fired boiler" to coincide with Chapter 150's definition of the term "outdoor wood boiler." Was there a reason for keeping the Town's existing definitions?

The terms "EPA Phase-One Qualified OWB" and "EPA Phase-Two Qualified OWB" are not contained in Chapter 150, and are apparently based on the particulate matter emission standards contained in Section 3(A)(1)-(2) of Chapter 150. I recommend that the definition of those two terms be modified to read as follows:

"EPA Phase-One Qualified OWB" means an OWB that has received certification pursuant to the EPA Outdoor Wood-Fired Hydronic Heater Program, or such alternative certification program as may be approved by the Maine Department of Environmental Protection, that the OWB meets a particulate matter emission limit of 0.60 lbs/MMBtu heat input."

"EPA Phase-Two Qualified OWB" means an OWB that has received certification pursuant to the EPA Outdoor Wood-Fired Hydronic Heater Program, or such alternative certification program as may be approved by the Maine Department of Environmental Protection, that the OWB meets a particulate matter emission limit of 0.32 lbs/MMBtu heat input."

Chapter 150 did not adopt a separate emission standard for outdoor pellet boilers, but it did adopt separate setback and stack height requirements for outdoor pellet boilers that have been certified to meet a particulate emission limit of 0.06 lbs/MMBtu heat output. The Town's proposed amendments include a definition of "Phase-Three Qualified OWB" that essentially creates a class of outdoor wood boilers (not just outdoor pellet boilers) that have less stringent setback and stack height requirements. Did the Ordinance Committee intend to apply those less stringent standards to all outdoor wood boilers that are certified to meet the 0.06 lbs/MMBtu limit? In any event, I recommend that the "Phase-Three" definition be modified to read as follows:

"Phase-Three Qualified OWB" means an OWB (or outdoor pellet boiler if the Town chooses to go with the DEP approach) that has received certification pursuant to the EPA Outdoor Wood-Fired Hydronic Heater

Adopted 12/21/2009
Effective 1/20/2010

Program, or such alternative certification program as may be approved by the Maine Department of Environmental Protection, that the OWB meets a particulate matter emission limit of 0.06 lbs/MMBtu heat input."

I also recommend that the term "Non-EPA Qualified OWB" be modified to read as follows:

"Non-EPA Qualified OWB" means an OWB that has received certification pursuant to the EPA Outdoor Wood-Fired Hydronic Heater Program, or such alternative certification program as may be approved by the Maine Department of Environmental Protection, that the OWB meets a particulate matter emission limits greater than 0.60 lbs/MMBtu heat input or with no certification."

The Town should also include Chapter 150's definition of the term "outdoor pellet boiler" in Section 2.1 of its Ordinance.

Since the amendments to Section 4.4 will create "Neighboring residence setbacks", I recommend the inclusion of the following definition in Section 2.1:

"Neighboring Residence Setback" means the minimum linear distance that an outdoor wood-fired boiler (or outdoor wood boiler if the Town chooses to replace its definition of "outdoor wood-fired boiler" with the Chapter 150's definition of "outdoor wood boiler") must be sited away from the nearest dwelling that is not on the same property as the boiler."

**TOWN OF HAMPDEN
Draft**

The Town of Hampden Hereby Ordains
Proposed Amendments to the Outdoor Wood-Fired Boiler Annual Licensing Ordinance

Deletions are ~~Strike through~~ Additions Double Underlined

**TOWN OF HAMPDEN, MAINE
OUTDOOR WOOD-~~FIRE~~D BOILER ANNUAL LICENSING ORDINANCE**

ADOPTED: Hampden Town Council, March 19, 2007
Effective Date: April 18, 2007

CERTIFIED BY: Denise Hodsdon
Name

Town Clerk
Title Affix Seal

**OUTDOOR WOOD-~~FIRE~~D BOILER ANNUAL LICENSING ORDINANCE
CONTENTS**

ARTICLE	PAGE
1. TITLE AND PURPOSE.....	2
2. DEFINITIONS.....	2
3. ANNUAL LICENSE REQUIRED.....	2
4. SPECIFIC REQUIREMENT.....	3
5. SUSPENSION OF LICENSE.....	3
6. WAIVERS.....	3
7. PENALTIES.....	4
8. EFFECT ON OTHER REGULATIONS.....	4
9. EFFECTIVE DATE.....	5

**TOWN OF HAMPDEN, MAINE
OUTDOOR WOOD-FIRED BOILER ANNUAL LICENSING ORDINANCE**

**ARTICLE 1
TITLE AND PURPOSE**

1.1. Title. This chapter shall be known as the "Town of Hampden, Maine Outdoor Wood-Fired Boiler Annual Licensing Ordinance."

1.2. Home Rule Authority. It is adopted pursuant to Municipal Home Rule Law.

1.3. Purpose. Although outdoor wood-fired boilers may provide an economical alternative to conventional heating systems, concerns have been raised regarding the safety and environmental impacts of these heating devices, particularly the production of offensive odors and potential health effects of uncontrolled emissions. This Ordinance is intended to ensure that outdoor wood-fired boilers are utilized in a manner that does not create a nuisance and is not detrimental to the health, safety and general welfare of the residents of the Town. Furthermore, this ordinance is intended to comply with the minimum standards contained in DEP Chapter 150, Control of Emissions From Outdoor Wood Boilers.

**ARTICLE 2
DEFINITIONS**

2.1. Definitions. As used in this chapter, the following terms shall have the meanings indicated:

"Commercial outdoor wood boiler" means any outdoor wood boiler used to service a commercial establishment.

"Outdoor pellet boiler" means an outdoor wood boiler designed and warranted by the manufacturer specifically to burn pellet fuel with metered fuel and air feed and controlled combustion engineering, which is operated according to the manufacturer's specifications and burns only pellet fuel.

"Outdoor wood boiler" (also known as outdoor wood-fired hydronic heater, water stove or outdoor wood furnace) means a fuel burning device designed to (1) burn wood or other approved solid fuels; (2) that the manufacturer specifies for outdoor installation or installation in structures not normally occupied by humans (e.g., garages); and (3) heats building space and/or water via the distribution typically through pipes, of a fluid heated in the device, typically water or a water/antifreeze mixture.

~~"Outdoor wood fired boiler (OWB)" (same as outdoor wood fired furnace) means an accessory structure or appliance capable of being installed out of doors and designed to transfer or provide heat, via liquid or other means, through the burning of wood or any other non-gaseous or non-liquid fuels for heating spaces other than where such structure or appliance is located, any other structure or appliance on the premises, or for heating domestic, swimming pool, hot tub or Jacuzzi water. "Outdoor wood fired boiler or furnace" but does not include a fire pit, wood fired barbecue, or chiminea.~~

"Outdoor wood boiler Emission Rating" means the EPA's rating system for OWBs which rate the emissions in pounds per million BTU' or lbs/MMBtu.

"EPA Phase-One Qualified OWB" means an OWB that has received certification pursuant to the EPA Outdoor Wood-Fired Hydronic Heater Program, or such alternative certification program as may be approved by the Maine Department of Environmental Protection, that the OWB meets a particulate matter emission limit of 0.60 lbs/MMBtu heat input.

"EPA Phase-Two Qualified OWB" means an OWB that has received certification pursuant to the EPA Outdoor Wood-Fired Hydronic Heater Program, or such alternative certification program as may be approved by the Maine Department of Environmental Protection, that the OWB meets a particulate matter emission limit of 0.32 lbs/MMBtu heat input.

"Phase-Three Qualified OWB" means an OWB (or outdoor pellet boiler if the Town chooses to go with the DEP approach) that has received certification pursuant to the EPA Outdoor Wood-Fired Hydronic Heater Program, or such alternative certification program as may be approved by the Maine Department of Environmental Protection, that the OWB meets a particulate matter emission limit of 0.06 lbs/MMBtu heat input.

"Non-EPA Qualified OWB" means an OWB that has received certification pursuant to the EPA Outdoor Wood-Fired Hydronic Heater Program, or such alternative certification program as may be approved by the Maine Department of Environmental Protection, that the OWB meets a particulate matter emission limits greater than 0.60 lbs/MMBtu heat input or with no certification.

"DEP Qualified OWB" means that the manufacturer of the OWB has voluntarily submitted their product for emission rating to a government other than the US government or other testing bodies as deemed acceptable by the DEP and based on the OWB's emission report the Maine Department of Environmental Protection classifies the OWB to the corresponding EPA standard. For purposes of this ordinance applicants must provide written documentation from the DEP to show evidence that the OWB is in fact DEP qualified.

"Neighboring Residence Setback" means the minimum linear distance that an outdoor wood boiler must be sited away from the nearest dwelling that is not on the same property as the boiler.

"Nuisance" means any odor, emission, or event that prevents the reasonable use and enjoyment of one's property. For purposes of this ordinance, an OWB shall constitute a nuisance following three or more verified complaints within any 30 day period.

"Firewood" means trunks and branches of trees and bushes, but does not include leaves, needles, vines or brush smaller than three inches in diameter.

"Setback" means the minimum linear distance that an outdoor wood boiler must be sited away from a prescribed physical location on the ground.

"Untreated lumber" means dry wood which has been milled and dried but which has not been treated or combined with any petroleum product, chemical, preservative, glue, adhesive, stain, paint or other substance.

ARTICLE 3 ANNUAL LICENSE REQUIRED

3.1. Annual license required. In addition to any permit required under the Town's Fire Prevention Code, no person shall cause, allow or maintain the use of an outdoor wood-fired boiler within the Town of Hampden, Maine without first having obtained an annual license from the Hampden Town Council. Application for annual license shall be made to the Town Clerk on the forms provided. (*Note: The state regulation does not require annual licensing*).

3.2. Standards for initial license. The Town Council shall issue an initial license for an outdoor wood-fired boiler if it determines that:

3.2.1 A permit has been issued for the proposed outdoor wood-fired boiler under the Fire Prevention Code; and

3.2.2 The proposed outdoor wood-fired boiler complies with the requirements of Sections 4.2, 4.3, 4.4 and 4.6 of this Ordinance.

3.2.3 The Town of Hampden shall not issue an initial license for a non-EPA qualified OWB or non-Maine Department of Environmental Protection alternative certified OWB after the effective date of this amendment.

3.3. Standards for renewal license. The Town Council shall issue a renewal license for an outdoor wood-fired boiler if it determines that:

3.3.1. The code official responsible for enforcement of the Fire Prevention Code provides written documentation to the effect that the outdoor wood-fired boiler is in compliance with the applicable provisions of that Code;

3.3.2 The outdoor wood-fired boiler is in compliance with the requirements of Sections 4.2, 4.3, 4.4, and 4.6 of this Ordinance;

3.3.3. The outdoor wood-fired boiler was operated in compliance with the requirements of Sections 4.1 and 4.5 of this Ordinance during the preceding year; and

3.3.4 None of the conditions set forth in Sections 5.1.1, 5.1.2, 5.1.3, 5.1.4, or 5.1.5 of this Ordinance occurred during the preceding year.

3.4. Existing outdoor wood-fired boilers. Any outdoor wood-fired boiler that was installed, connected, and operating as of the effective date of this Ordinance shall be permitted to remain, provided that the owner applies for and receives an annual license from the Town Council within 120 days of such effective date. Provided, however, that upon the effective date of this Ordinance all the provisions of this Ordinance, except Sections 4.2 *Permitted Zones*, 4.3 *Minimum Lot Size*, and 4.4 *Setbacks* in the event and to the extent that the existing outdoor wood-fired boiler in question does not comply with the same, shall immediately apply to any existing outdoor wood-fired boiler. Any existing outdoor wood-fired boiler that is not in compliance with Sections 4.3 and 4.4 shall not be made more nonconforming. If the owner of an existing outdoor wood-fired boiler does not receive a permit within one year of the effective date of this Ordinance, the outdoor wood-fired boiler shall be removed.

ARTICLE 4 SPECIFIC REQUIREMENTS

4.1. Permitted fuel. Only firewood and untreated lumber are permitted to be burned in any outdoor wood-fired boiler. Burning of any and all other materials in an outdoor wood-fired boiler is prohibited.

4.2. Permitted zones. Outdoor wood-fired boilers shall be permitted in all zoning districts except the Resource Protection District as shown on the Town's Zoning Map.

4.3. Minimum lot size Outdoor wood-fired boilers shall be permitted only on lots of three acres or more in accordance with the following minimum lot size:

	<u>Minimum Lot Size</u>
<u>Existing Non-EPA Qualified Outdoor Wood Boilers Only</u>	<u>3 Acres</u>
<u>EPA Phase-One Qualified Outdoor Wood Boilers</u>	<u>1 Acre</u>
<u>EPA Phase-Two Qualified Outdoor Wood Boilers</u>	<u>0.5 Acre</u>
<u>Phase-Three Qualified Outdoor Wood Boilers (pellet)</u>	<u>0.25 Acre</u>

The applicant for a permit under this Ordinance shall demonstrate that the Commercial outdoor wood boiler or Outdoor Wood Boiler with a thermal rating greater than 350,000 Btu/hr shall be installed and operated in accordance with Chapter 150 of the Rules of the Maine Department of Environmental Protection, "Control of Emissions from Outdoor Wood Boilers," as the same may be amended from time to time.

(Note: The state regulation does not set minimum lot sizes but it logically creates them with the required setbacks).

4.4. Setbacks. Outdoor wood-fired boilers shall be set back not less than 150 feet from the nearest lot line from property lines according to the following standards:

<u>Property Line Setback</u>	<u>Minimum</u>
<u>Existing Non-EPA Qualified Outdoor Wood Boilers Only</u>	<u>150 Feet</u>
<u>EPA Phase-One Qualified Outdoor Wood Boilers</u>	<u>100 Feet</u>
<u>EPA Phase-Two Qualified Outdoor Wood Boilers</u>	<u>50 Feet</u>
<u>Phase-Three Qualified Outdoor Wood Boilers (pellet)</u>	<u>20 Feet</u>

(Note: The state regulation requires these setbacks).

Additionally, outdoor wood-fired boilers shall be set back not less than 200 feet from neighboring residences according to the following standards:

<u>Neighboring Residence Setback</u>	<u>Minimum</u>
<u>Existing Non-EPA Qualified Outdoor Wood Boilers Only</u>	<u>200 Feet</u>
<u>EPA Phase-One Qualified Outdoor Wood Boilers</u>	<u>120 Feet</u>
<u>EPA Phase-Two Qualified Outdoor Wood Boilers</u>	<u>70 Feet</u>
<u>Phase-Three Qualified Outdoor Wood Boilers (pellet)</u>	<u>40 Feet</u>

(Note: The state regulation requires these setbacks).

Stack Height Requirements for New Outdoor Wood Boilers and Outdoor Pellet Boilers

Existing Non-EPA Qualified Outdoor Wood Boilers are not subject to this requirement.

EPA Phase-One Qualified Outdoor Wood Boilers. No person shall install or allow the installation of any EPA Phase-One Qualified Outdoor Wood Boiler unless the outdoor wood boiler or outdoor pellet boiler: (1) has an attached stack with a minimum stack height of 10 feet above ground level; or (2) has an attached stack extending two feet higher than the peak of the roof of the structure being served by the outdoor wood boiler or outdoor pellet boiler, if a neighboring residence is located less than 300 feet from the outdoor wood boiler or outdoor pellet boiler.

EPA Phase-One Qualified Outdoor Wood Boilers. No person shall operate any EPA Phase-One Qualified Outdoor Wood Boiler if a neighboring residence is located less than 300 feet from the outdoor wood boiler or outdoor pellet boiler, unless the outdoor wood boiler or outdoor pellet boiler has an

attached stack extending two feet higher than the peak of the roof of the structure being served by the outdoor wood boiler or outdoor pellet boiler.

EPA Phase-Two Qualified Outdoor Wood Boilers. No person shall install or allow the installation of any EPA Phase-Two Qualified Outdoor Wood Boiler unless the outdoor wood boiler or pellet boiler: (1) has an attached stack with a minimum stack height of 10 feet above ground level; or (2) has an attached stack extending two feet higher than the peak of the roof of the structure being served by the outdoor wood boiler or outdoor pellet boiler, if a neighboring residence is located less than 300 feet from the outdoor wood boiler or outdoor pellet boiler.

EPA Phase-Two Qualified Outdoor Wood Boilers. No person shall operate any EPA Phase-Two Qualified Outdoor Wood Boiler, if a neighboring residence is located less than 300 feet from the outdoor wood boiler or outdoor pellet boiler, unless the outdoor wood boiler or outdoor pellet boiler has an attached stack extending two feet higher than the peak of the roof of the structure being served by the outdoor wood boiler or outdoor pellet boiler.

Phase-Three Qualified Outdoor Wood Boilers. No person shall install or allow the installation of any Phase-Three Qualified Outdoor Wood Boilers, unless the outdoor pellet boiler: (1) has an attached stack with a minimum stack height of 10 feet above ground level; or (2) has an attached stack extending two feet higher than the peak of the roof of the structure being served by the outdoor pellet boiler, if a neighboring residence is located less than 100 feet from the outdoor pellet boiler.

Phase-Three Qualified Outdoor Wood Boilers. No person shall operate any Phase-Three Qualified Outdoor Wood Boilers, if a neighboring residence is located less than 100 feet from the outdoor pellet boiler, unless the outdoor pellet boiler has an attached stack extending two feet higher than the peak of the roof of the structure being served by the outdoor pellet boiler.

(Note: The state regulation requires these stack heights).

The applicant for a permit under this Ordinance shall demonstrate that the Commercial outdoor wood boiler or Outdoor Wood Boiler with a thermal rating greater than 350,000 Btu/hr shall be installed and operated in accordance with Chapter 150 of the Rules of the Maine Department of Environmental Protection, "Control of Emissions from Outdoor Wood Boilers," as the same may be amended from time to time.

4.5. Months of operation. Outdoor wood-fired boilers shall be prohibited from operation between the dates of May 1 and October 1.

(Note: The state regulation does not restrict months of operation).

4.6. Spark arrestors and rain caps. All outdoor wood-fired boilers shall be equipped with properly functioning spark arrestors. Use of a rain cap on the stack of an OWB is prohibited unless required by the manufacturer specifications.

(Note: The state regulation does not mandate spark arrestors but does prohibit rain caps).

4.7. Continued compliance required. If an outdoor wood-fired boiler is installed in compliance with Sections 4.3 and 4.4, the outdoor wood-fired boiler may not be used if the lot on which it is situated is altered so that the minimum lot size or setback(s) are no longer met.

ARTICLE 5 REVOCATION OF LICENSE

5.1. Revocation of license. A license issued pursuant to this Ordinance may, after notice and hearing, be revoked as the Town Council may determine to be necessary to protect the public health, safety and welfare of the residents of the Town of Hampden if any of the following conditions occur:

5.1.1. Emissions from the outdoor wood-fired boiler exhibit opacity that obscures or partially obscures clear view of structures and trees that lay behind the smoke and haze on either the property where the outdoor wood-fired boiler is located or on adjoining properties. This may be evidenced by photographs that are time dated;

5.1.2. Malodorous air contaminants from the outdoor wood-fired boiler are detectable outside the property boundaries of the land on which the outdoor wood-fired boiler is located. This may be evidenced by Town Public Safety Officials;

5.1.3. The emissions from the outdoor wood-fired boiler interfere with the reasonable enjoyment of life or property;

5.1.4. The emissions from the outdoor wood-fired boiler cause damage to vegetation or property; or

5.1.5. The emissions from the outdoor wood-fired boiler are or may be harmful to human or animal health.

5.2. Prohibited use after revocation. If a license is revoked, the outdoor wood-fired boiler in question shall not used or operated.

5.3. Reinstatement of license. A revoked license may be reinstated once the condition which resulted in revocation is remedied and reasonable assurances are given that such condition will not recur. Recurrence of a condition which has previously resulted in revocation of a license shall be considered a violation of this Ordinance subject to the penalties provided in *Section 7.1 Penalties for offenses* hereof.

ARTICLE 6 WAIVERS

6.1. Waivers. Where the Town Council finds that extraordinary and unnecessary hardships may result from strict compliance with this Ordinance, it may vary the regulations so that substantial justice may be done and the public interest secured, provided that such variations will not have the effect of nullifying the intent and purpose of this Ordinance or of jeopardizing the health, safety or welfare of the public. In varying any regulations, the Town Council may impose such conditions and requirements as it deems reasonable and prudent. The Town Council may, at its discretion, hold a public hearing as part of its review. If the Town Council grants the waiver, a license shall be issued for the outdoor wood-fired boiler. If the Town Council denies the waiver, the outdoor wood-fired boiler must either be brought into compliance with this Ordinance or removed. If the Town Council does not take any action with respect to the waiver within 60 days from its receipt of an application for waiver, the waiver shall be deemed denied.

ARTICLE 7 PENALTIES

7.1. Penalties for offenses. Failure to comply with any of the provisions of this Ordinance shall be a violation and, upon conviction thereof, shall be subject to a civil penalty in accordance with Title 30-A

M.R.S. §4452. In addition, any license issued pursuant to this Ordinance shall be revoked upon conviction of a second offense and the subject outdoor wood-fired boiler shall not be eligible for another license. Each day that a violation occurs shall constitute a separate offense. All penalties shall inure to the benefit of the Town of Hampden. The owners of premises upon which prohibited acts occur shall be jointly and severally liable for violations of this Ordinance. Violators shall also be responsible for any and all court fees, expert witness fees, costs, and reasonable attorney fees if the Town is the prevailing party in an enforcement action.

ARTICLE 8 EFFECT ON OTHER REGULATIONS

8.1. *Effect on other regulations.* Nothing contained herein shall authorize or allow burning which is prohibited by codes, laws, rules or regulations promulgated by the United States Environmental Protection Agency, Maine Department of Environmental Protection or any other federal, state, regional or local agency. Outdoor wood-fired boilers, and any electrical, plumbing or other apparatus or device used in connection with an outdoor wood-fired boilers, shall be installed, operated and maintained in conformity with the manufacturer's specifications and instructions and any and all local, state and federal codes, laws, rules and regulations. In case of a conflict between any provision of this Ordinance and any applicable federal, state or local ordinances, codes, laws, rules or regulations, the more restrictive or stringent provision or requirement shall prevail.

ARTICLE 9 SEVERABILITY

9.1. *Severability.* Should any provision of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected.

ARTICLE 10 EFFECTIVE DATE

10.1. *Effective Date.* The effective date of this Ordinance shall be 30 days from the date of adoption by the Town Council.

9. Jane Jarvi – Recreation Committee
10. David Hawkins – Lura Hoit Pool Board of Trustees

Services Committee Chair Cox read the full list of applicants for the record and reported that the Services Committee has interviewed all of the applicants and recommends appointment of the full slate.

Motion by Councilor Cox, seconded by Councilor Lawlis to appoint the full slate of nominees – unanimous vote in favor.

3. UNFINISHED BUSINESS

While there were no items of unfinished business on the agenda, Mayor Arnett noted that there are five candidates for the vacant School Board seat as listed on the Consent Agenda. He asked for volunteers to form a committee to interview the candidates and make a recommendation to the Council for appointment at the first meeting in January. Councilors Hughes, Lawlis and Cushing will serve on that committee.

4. NEW BUSINESS

- a. KIWANIS CLUB OF HAMPDEN – GAMES OF CHANCE LICENSE AUTHORIZATION

Motion by Councilor Brann, seconded by Councilor Cushing to approve the license – unanimous vote in favor.

D. COMMITTEE REPORTS

Councilor Cox reported that the Services Committee met last week and reviewed the applications for the various boards and committees. They heard an update about the proposed dog park and talked about replacement of the circulation desk at the library. There was also discussion about how much of the work of the Services Committee ties into what will come out of the work of the Committee on Committees. The Committee continues to work with Staff on an outdoor facilities ordinance. The next meeting of the Services Committee will be January 11, 2010 at 6:00 p.m.

Councilor Cushing reported that the Planning & Development Committee did not meet in December due to a conflict when the Planning Board's meeting being had to be rescheduled because of a snowstorm. He further reported that the Committee on Committees will meet at noon on December 30th at Fresh Ginger Restaurant.

Councilor Brann reported that the Infrastructure Committee will meet at 6:00 p.m. on December 28th.

Manager Lessard reported that the Finance Committee met earlier in the evening and reviewed an itemization of all Town funds; there was discussion about the landfill closure and that it will mean the end of Host Community Benefits that the Town and some local residents have received during the active life of the landfill. The Committee also discussed the impact of the State budget cuts to both the Town and to SAD #22.

Mayor Arnett reported that the Penobscot Valley Council of Government (PVCOG) has been going through a substantial change and is rethinking its mission. Following a recent meeting of the membership, PVCOG will be going into a state of hibernation for one year and has established a reduced fee structure during that time. Hampden's fee will be \$500.00.

E. MANAGER'S REPORT

A copy of the Manager's Report is attached hereto.

F. COUNCILOR'S COMMENTS

Councilor Hughes reminded everyone that the public hearing for the proposed Shoreland Zoning Ordinance will be on January 4, 2010 and urged anyone who has questions or concerns to visit the Town Office prior to the hearing. She wished everyone a Merry Christmas.

Councilor Cox commented that in her work with the Red Cross, they have responded to a house fire a day for the last eight days. She urged everyone to take a few minutes to check their Christmas tree lights, woodstoves, chimneys and furnaces in order to have a safe holiday season. She wished everyone Happy Holidays.

Councilor Cushing and Councilor Brann wished everyone Happy Holidays.

Councilor Lawlis commented that as part of the development of an outdoor facilities ordinance the Services Committee will be soliciting input from the public relative to hours of operation.

Councilor Shakespeare wished Economic Development Director Dean Bennett the best in his recovery and welcomed Town Manager Lessard back after her recent surgery. He wished everyone Happy Holidays.

Mayor Arnett expressed admiration for Manager Lessard's return to work so quickly after her hip replacement and thanked her for her work ethic, wisdom and good spirit. He expressed best wishes to all for a Happy Holiday Season.

G. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:08 p.m.



Denise Hodsdon
Town Clerk

MANAGER'S REPORT
12-21-09

Tree Lighting Party – Thanks to the Kiwanis for sponsoring the annual tree lighting and holiday party with Santa for local children that was held on Sunday, December 6th.

Newsletter – According to Editor Annie O'Reilly, the next edition of the newsletter will be set next week and sent off to the printer for distribution within the first two weeks of January. This edition will feature a new column by the Mayor as well as an in-depth feature on the imminent closure of the Pine Tree Landfill.

State Budget Impact – The most recent budget restrictions at the State level will impact SAD #22 in the following ways loss of \$192,000 in 08/09, loss of an additional \$282,000 in 09/10, loss of an additional \$282,000 in 2010/2011, and loss of \$317,000 in Stimulus funds in 2011/2012. That totals an overall reduction in State funding for SAD #22 of \$1, 073,000. On the municipal side, we will see additional reductions in Revenue Sharing, as well as 'pushed' payments for Homestead Exemption and reductions in Tree Growth reimbursement.

Thank you – I would like to thank everyone who took the time to send cards and notes following my hip replacement surgery on December 7th. I appreciate the thoughtfulness.

Employee Christmas Lunch – The employee Christmas luncheon held on 12/17/09 went well and was well attended.

Pool Fuel Use Declines – Updated numbers on fuel usage at the pool show that the new boiler installations at the facility are working well. Through the first five months of 2009/2010 fiscal year, the facility used 2,764 gallons less than was used in the same five month period of the 2008/2009 fiscal year.

Assessor Retirement Get Together – A reminder to the Council and any interested residents that we will be having a retirement reception for long time assessor Vivian Gresser at 5 p.m. on Monday, January 4th in the Community Room.

Assessor Second Interviews – I will be holding 2nd interviews for Assessor Candidates on Tuesday and Wednesday afternoon this week. I am in hopes of having a decision by the end of this work week. Vivian has agreed to be available for the new hire during the first few months of 2010 if necessary.

Landfill Fires – There were several fires at the landfill during the first few weeks of December. One resulted in a request for assistance from the Town's Fire Department. Several small flare ups were in an area where construction activity (road) had taken place to allow the gas well drillers access to the site. The landfill has added additional clay to the area to insure that there is no exposed waste which can cause fires. The other fire was in the area of the landfill had had been capped and finally closed last summer. That was 'drowned' with leachate and landfill personnel – as well as DEP and our own consultants are looking closely at this event to see how/why it may have occurred. I will provide you with update information when we receive it from our consultants.

According to landfill personnel – it is anticipate that the date of actual final delivery will be coincide with the last available date - 12/31/09.

Economic Development Director – Dean Bennett had a post-surgery doctor visit today (His surgery was on 12/5). As of the last email I received, he indicated that he was feeling better and hoping to return to work sometime soon after the beginning of the year.